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SHALL WE MAKE OUR CONSTITUTION FLEXIBLE?

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In July, 1909, a constitutional amendment, empowering Congress to tax incomes, from whatever source derived, was approved by the Senate unanimously and by the House of Representatives by 317 votes to 14. At the present time, this proposal has been ratified by the legislatures of thirty-one States, containing seventy-three per cent. of the population of the forty-six States. Strong as this support is, it is insufficient, and it is far from certain that the amendment will secure the additional ratifications that are necessary for its adoption.

The power of a small minority of the States to nullify the will of the great majority of the people of the United States has existed so long and is so familiar to us that it is not without an effort that we realize how extraordinary our constitutional situation really is. In what other Federal union would a vote of two-thirds of the constituent States, including nearly three-fourths of the population, be insufficient to change the law? In what other nation, possessing representative institutions, would a measure supported by so large a majority of the people fail of effect? The tax measures which the British House of Lords recently opposed were supported by a far smaller majority of the British people; and not only has the opposition of the House

of Lords been overridden, but the position of that House as a co-ordinate factor in legislation has been destroyed.

When the framers of our Constitution provided that amendments should require the assent of three-fourths of the States, they were trying to escape from the restraints of a still more rigid constitution, amendable only by the consent of all the States; and in order to accomplish their purpose they were compelled to override the existing law. It could not have been their intention to make the new Constitution unchangeable except by another *coup d'état* or revolution. In fact, under the conditions which existed at that time, the majority which they decided to require was not hard to obtain. In spite of sectional differences of sentiment and opinion, the social, economic, and political conditions of the thirteen original States were sufficiently uniform to make general agreement upon important matters far from difficult. Not only was the Constitution accepted by more than three-fourths of the States within less than a year, but in the following sixteen years twelve important amendments were adopted. During this period, and as late as 1820, a similar facility of agreement was exhibited in presidential elections. Of the first nine elections, two were unanimous, a third was practically unanimous, and two others were carried by a five-sixths majority of States. But after 1820 the conditions changed. In addition to the widening gulf between the free and the slave States, there were increasing divergences of a more permanent character. In New England and in the middle Atlantic States commercial and manufacturing interests were becoming preponderant, while the southern and north central sections remained substantially agricultural. The rapid settlement of the interior of the country produced Americans of a new type, with new social ideals. In the latter part of the nineteenth century there appeared a group of western mining States with specific interests of their own. The political effect of these changes has been marked. In the twenty-two Presidential elections from 1824 to 1908 inclusive, the winning party carried three-fourths of the States but three times: the Democrats in 1852; the Republicans in 1868 and in 1872. In each of these years the political situation was peculiar. Pierce carried twenty-seven out of the thirty-one States, not because the country had become overwhelmingly Democratic, but because the Whig party had gone to pieces.

Grant twice carried more than three-fourths of the States, because the North had been solidified by a victorious war and the southern States were occupied by northern troops. At this period, however, for the first time since 1820, a political party had the power to change the organic law, and in the years 1865–1870 the thirteenth, fourteenth, and fifteenth amendments were ratified—the only amendments that have been made since 1804.

If the income-tax amendment be adopted, it will not indicate that conditions have again changed and that general agreement has again become easily attainable. This amendment comes before the country under very exceptional auspices. Proposed by a Republican President and passed by a Republican Congress, it is supported by Democrats as an essentially Democratic measure. It has the further advantage of presenting itself not as an innovation, but as a restoration. It accords to Congress a power which that body had previously exercised with the approval of the Supreme Court, and of which it was deprived only because the Supreme Court reversed itself. The rejection of this amendment, indeed, would go far to prove that formal change of the Constitution is impossible, but its adoption should not unduly elate those who desire further amendments.

I

Some of the evils which result from the rigidity of our Constitution are too obvious to need argumentative exposition. It is to-day a commonplace that law must change with the changing needs of the society which it serves. As a matter of fact, our organic law has been developed and even changed in many respects in which the Constitution has not been formally amended. The war powers of the President are based upon the unwritten constitution; they exist because they have been repeatedly exercised with the support of Congress and the somewhat reluctant acquiescence of the courts. The Presidential electors have ceased to elect; they have become keys in an adding-machine which records popular majorities in the several States; because the people of the United States, acting through their party organizations, have so decreed. In the same way, the action of State legislatures in voting for Federal Senators has, in many of our States, become a mechanical function, the legislators giving a purely formal sanction to

decisions rendered by the voters in party primaries. The implied powers of Congress are now more numerous than those expressly granted in the written Constitution; they have been developed by their exercise, with the approval of the Federal judiciary in those matters of which the Federal courts have jurisdiction. The power of the Supreme Court to annul acts of Congress which it deems unconstitutional, whether clearly deducible from the text of the Constitution or not—a point on which a difference of opinion is still admissible—actually exists because the court has asserted this power and the executive and legislative branches have submitted to its exercise. In our national governmental system, this process of change by the establishment with general consent of new governmental custom has been necessitated by the practical impossibility of formal constitutional amendment. Development along these lines, however, cannot go beyond a certain point. There has already been at least one crisis in our national life which clearly demanded the amendment of the written Constitution: it should have been possible to put into the Constitution some such check upon the extension of slavery as was contained in the Missouri Compromise. And to-day it is coming to be generally felt that additional powers should be accorded to the national government, and that some of the existing constitutional restraints upon State legislature should be relaxed. There are many pressing problems which, apparently, can be solved only by conferring upon the Federal government powers which can hardly be implied by the boldest interpretation of the written Constitution; and the satisfactory solution of many industrial problems by the several State legislatures is impeded by the very broad protection of private rights which is expressly contained in the Federal Constitution or has been read into it by judicial decisions. When the point is reached at which our Federal Constitution cannot be bent by the economic and other social forces which it now checks, there is danger that it will be broken.

The effort to bend the Constitution to meet new social needs, and the tendency to evade its restrictions when these appear harmful, may be justified on the ground of necessity; but progress along these lines has many undesirable results. Evasion of law does not increase respect for law, and the lack of respect for law is already one of our national vices. Further, the attempt to evade the law and to justify its

evasion is unfavorable to intellectual integrity, to straight thinking and honest speech, on the part of our legislators, and also, in second instance, on the part of our judges. To cite a recent example, there was not a little apprehension in Congress that the bill for establishing postal savings-banks would be found to be unconstitutional; accordingly the investment features of the bill were so remodeled as to make it possible for the Supreme Court to uphold this measure as an exercise of the Federal borrowing power. Senator Bailey hardly went too far in pronouncing this a "palpable subterfuge."

Farther reaching and more serious are the effects of our rigid Constitution on our politics. It is charged by foreign critics, and conceded by many Americans, that our parties have no principles and are simply agencies for filling offices. This state of things is usually and rather cheaply ascribed to the corrupt tendencies of human nature; more particularly to the apathy of the virtuous and the energy of the unscrupulous. If, however, we are willing to look a little more deeply into the situation, it will seem at least possible that our parties have no use for principles because they would not be able to put them into practice. Mr. Roosevelt's New Nationalism would be an excellent party programme if the results that he desires could be attained without amending the Constitution; but in view of the practical impossibility of securing the necessary amendments in the constitutional way, his propaganda began, and has for the present ended, in criticism of the Supreme Court because that tribunal has not developed our constitutional law along new nationalistic lines. Whether Mr. Roosevelt's strictures are justified or not is here beside the question. His attitude is cited to show the difficulty of building up a party pledged to radical reform measures, when it is obviously impossible for a party to redeem such pledges. If a party that can carry a Presidential election by a fair majority of electoral votes could also amend the Constitution, a strong national party might well be formed with a programme more radical than Mr. Roosevelt's—a programme which men of conservative temper would probably term socialistic. Under such conditions, conservatives would no longer be able to rely upon the rigid Constitution and the Supreme Court to protect property interests; they would be forced to organize a party representing their principles. Even a conservative,

if a broad-minded man, might view such a result with satisfaction. National parties would then represent something besides the scramble for office, and their leaders would probably be men of a different type from the majority of our practical politicians.

Perhaps the most regrettable effect of the rigidity of our Federal Constitution is the position in which it places our judges. Partly by the express provisions of the Constitution, partly by what have seemed the necessary implications of that instrument, but largely by virtue of established custom, our courts exercise a control over legislation that has no precedent in legal history and no parallel in any modern State. They are the guardians of our constitutional law, and, so far as their jurisdiction extends, they have the power to deny legal operation to acts passed by representative legislatures if in their opinion such acts are unconstitutional. In so doing they are understood to give effect to the will of the sovereign people as against the unauthorized acts of the people's agents. The courts, however, are also subject, in theory, to the will of the sovereign people; and from their decisions appeal (in a political sense) runs to the people. By amending the Constitution the people may authorize the legislature to pass again, and this time with full legal effect, the law which the courts have vetoed. In all cases in which the judicial veto is based upon the provisions or implications of a State constitution, such an appeal is of practical value, for our State constitutions are easily amended. In cases, however, in which the judicial veto is based upon the provisions or implications of the Federal Constitution, the right of appeal to the sovereign is illusory, because the sovereign can speak with legal effect only through the legislatures of three-fourths of the States. Practically, therefore, the judicial veto of State legislation, as contrary to a State constitution, is a suspensive veto only; but the judicial veto of State or Federal legislation, as contrary to the Federal Constitution, is absolute. As regards State legislation, this absolute veto may be interposed either by a State court or by a Federal court; and under the existing law the veto interposed by a State court is not subject to review in the Supreme Court of the United States.

In the minds of conscientious men, power carries with it a sense of responsibility; and in determining whether national or State legislation is or is not constitutional our

judges have been increasingly influenced, consciously or unconsciously, by their opinion of the wisdom or unwisdom of each measure submitted to them. The accumulating mass of decided cases has come to contain so many judgments or dicta representing different points of view that it is seldom difficult to find equally satisfactory arguments for the allowance or disallowance of any law which is neither clearly constitutional nor clearly unconstitutional.

The control which our courts exercise over State and national legislation has been regarded by most American publicists, and by some foreign authorities, as the most admirable feature of our political system. The American people, so far as its sentiments can be inferred from its acts, has always regarded this control as inconsistent with democratic principles. Feeling that the judges were exercising functions essentially political, the people of the more democratic States have made their judges elective; and now, in some of our States, they are proposing to subject judges to the "recall." Our Federal judges are protected against such attacks; but question is being raised whether their veto power cannot be limited if Congress sees fit to exercise its recognized powers to determine the jurisdiction and to regulate the procedure of the Federal courts.

It seems clear that the criticism of the courts, which is now so rife, and the "attacks upon the judiciary," which are becoming so common, spring from the natural resentment of a supposedly self-governing people against the absolute veto which the courts are interposing with increasing frequency upon State and national legislation. A suspensive veto is the fullest power which our political theory has ever accorded to the judiciary; and this degree of control over legislation would be regarded by all, except the most radical advocates of "people's rule," as a desirable check upon hasty and ill-considered measures. To this degree of control the courts would be limited if the people of the United States could amend the Federal Constitution with anything like the ease with which the people of the several States amend their State constitutions.

II

It is obvious that the only line of escape from the existing situation, except through revolution, lies in the amendment of the amending clause of the Federal Constitution.

As soon as this problem is stated two questions arise: first, what more workable method of amendment seems best adapted to our dual system of government; and, second, what changes in the amending clause would probably stand the best chance of securing the assent of three-fourths of the States?

Our form of government obviously requires that the will of the people of the United States be expressed through their State organizations. The reference of constitutional amendments to the people of the United States, irrespective of their State organizations, would be unthinkable unless the qualifications of the voters were determined by Federal law. Whether such an increase of the power of the Federal government is desirable or undesirable is beside the present question. All that here concerns us is the fact that an amendment to the amending clause, burdened by such a provision, would have no chance of adoption.

A proposal to lower the proportion of State votes necessary for ratification from three-fourths to two-thirds could possibly be carried; but even a superficial study of our political history will show that such a change would be of little practical advantage. In the twenty-two Presidential elections held since 1820 there have been, in addition to the three cases noted above in which three-fourths of the States were carried by the victorious party, only three cases in which two-thirds of the States were carried. This exceptional degree of success was attained by Jackson in 1832, by Harrison in 1840, and by Roosevelt in 1904. The election of 1904 was the only one since 1872 in which the winning party carried even two-thirds of the States; and Roosevelt's majority, like the far greater majority secured by Pierce in 1852, was due less to the strength of his own following than to dissension in the opposing party. Even if it be assumed that in 1904 the same number of States would have ratified an amendment proposed as a Republican party measure, the possibility of achieving such a result once in thirty-two years would hardly meet the exigencies of the situation.

A proposal that constitutional amendments should be ratified by a simple majority of the States would, in view of the great disparity of their populations, be met by the same arguments by which the requirement of a three-fourths majority is usually justified. With the admission of New Mexico and Arizona there will be forty-eight States. If

the twenty-five smaller States—using the term with reference to their populations simply, irrespective of their areas—were able to carry an amendment against the voice of the twenty-three larger States, we should have less than one-fifth of the population of all the States prevailing over the other four-fifths; and, if we further assume that the opinion of the people of these twenty-five States was divided and that the affirmative vote represented in each State a bare majority, we should have the will of the people of the United States determined by votes representing one-tenth of the total population.

Such computations may interest the arithmetical mind, but politically they are meaningless. At no period in the history of the United States have the smaller States been lined up against the larger either in national elections or in the votes on constitutional amendments. If, indeed, it were proposed to diminish seriously the political influence of the smaller States—if, for example, it were proposed that the votes in the Electoral College should be distributed in proportion to population — these States might stand together against the rest of the Union, but not on any other sort of issue. They are an arithmetical, not a geographical nor an economic group. The list includes commonwealths as widely separated as Maine and Washington, Arizona and Florida. It includes ten agricultural States and fifteen States in which manufacturing and commercial interests are preponderant. If all these twenty-five States supported a candidate or a measure, it is inconceivable that any considerable number of the larger States would be found in opposition.

It is politically possible, however, that a narrow majority of larger and smaller States, containing less than half of the population of all the States, might be lined up against a minority of States containing more than half of the total population. In the southern and central sections of the Union agricultural interests predominate more or less strongly; in the northeastern and far western sections manufacturing and commercial interests are preponderant. It is possible, as the writer has found by experiment, to construct along these economic-sectional lines several slightly varying divisions of the States, in each of which twenty-five southern and central States, with from 43 to 49 per cent. of the population of all the States, might prevail over

twenty-three northeastern and far-western States, with from 57 to 51 per cent. of the total population. And, since the manufacturing States are increasing in population more rapidly than the agricultural States, the disparity of population in such alignments would tend to become greater.

If, then, we abandon the principle of demanding more than a simple majority of the States for the ratification of constitutional amendments, we must abandon also in this matter the principle of the complete equivalence of State votes. The votes of the several States must be weighted more or less in accordance with their population. Such a change would be in harmony with democratic principles; and such a departure from the policy of the framers of the Constitution could be defended by arguments based upon the analogy of the Electoral College and upon the greatly increased disparity of State populations. In 1800 the largest of the States, Pennsylvania, had nine times the population of the smallest, Delaware; to-day the ratio between these two States is thirty-eight to one, and that between New York and Nevada is one hundred and eleven to one.

Twenty-one years ago, in his *Political Science and Constitutional Law,* Professor John W. Burgess formulated a plan for the amendment of the amending clause of the Federal Constitution which deserves more consideration than it appears to have received. Briefly stated, his plan is as follows: proposal of amendments by two successive Congresses, Senators and Representatives acting in joint assembly and resolving by simple majority vote; submission of proposals to the legislatures of the several States, these again acting in joint assembly and resolving by simple majority vote; assignment to each State of the same weight in the count of votes as in a Presidential election, and ratification of amendments by a simple majority of the State votes thus weighted. In Professor Burgess's opinion, the purpose of a written constitution is not to enable a minority to thwart persistently and successfully the matured and deliberate will of a clear majority, but to insure the formation, on the part of the majority, of a purpose that is matured and deliberate. Accordingly, while he reduces to a simple majority the proportion of votes necessary for proposal and for ratification, he lengthens the period of proposal; and in requiring the reconsideration of a proposal

by a succeeding Congress, he gives an opportunity to the country to express its opinion in the election of a new House of Representatives.

This plan is not only logically consistent in all its details, but it seems to meet the exigencies of the situation. With the power to propose and the power to ratify constituted on the same basis as the power to elect a President, it is clear that any party able to secure control of the national government could carry any amendment to the Constitution which could survive the test of examination and discussion for two years. It is another question, however, whether this plan, if placed before the country and fully discussed, would be approved in three-fourths of the States. The people of the larger States and all persons who hold opinions at once national and democratic would probably feel that, if the States were to be weighted at all, they should be weighted according to population; while the people of the smaller States and all who hold fast to the equality of the States would surely object to the possibility, however theoretical and remote, that a minority of States should outvote a majority. This second group of States and persons, moreover, would undoubtedly object strongly to the suggestion that amendments be proposed in joint assembly of the two Houses of Congress, on the ground that the equal representation of the States in the Senate is the one complete recognition of the equality of the States. To expose a majority of Senators to the possibility of being outvoted in a joint assembly of the two Houses would be regarded as an inadmissible sacrifice of the Federal principle. It is doubtless for these reasons that Professor Burgess's plan has not elicited greater support; and it is probable that the objections above noted, theoretical as they are, would militate seriously against its adoption.

It is the object of this paper to suggest a scheme of amendment which seems simpler, which retains the existing agencies of proposal and of ratification, which recognizes the Federal principle of the equality of the States as well as the democratic principle of majority rule, and which, therefore, may possibly encounter fewer objections than that proposed by Professor Burgess. The plan is briefly as follows (italics indicating changes): proposal of amendments by the majority vote of both Houses *in two successive Congresses;* submission of such proposals to the legislatures of the sev-

eral States or to conventions in the several States *or directly to the voters in each of the States,* as one or another of these modes of ratification may be proposed by Congress; and ratification of proposals *by a majority of the States, provided that the ratifying States contain, according to the last preceding enumeration, a majority of the total population of all the States.*

The plan here outlined accepts Professor Burgess's suggestion that an amendment proposed by one Congress must be accepted by a second Congress with a newly elected House of Representatives before the proposal may be submitted to the States. In addition to the arguments for such delay cited above, which seem conclusive, it may be noted that this longer period of consideration and discussion will probably produce proposals of superior precision. The language of some of the amendments, especially that of the latest amendments, is less clear than that of the original Constitution. The pending income-tax amendment is so worded that expert opinions differ on the question whether it does or does not empower Congress to tax the incomes derived from State and municipal bonds. Its acceptance in New York was jeoparded by this discovery; its acceptance in other States may be prevented by the existing doubt as to its probable effect. If it had been necessary to hold this proposal over for reconsideration in the Sixty-second Congress, the point raised by the Governor of the State of New York could have been met before the amendment went to the State legislatures.

The addition of the direct vote of the people of each State to the modes of ratification now authorized seems to be warranted by the fact that this method of ratification has long been generally employed for the amendment of our State constitutions. If the Federal Constitution be not modified in this sense, the provision requiring consent by legislatures or conventions will probably be evaded in much the same way in which similar provisions excluding direct popular action in Presidential elections and in the choice of Federal Senators have been evaded.

The most important feature, however, of the plan here suggested is the proposal to lodge the final power of amendment—the truly sovereign power in our system—in a majority of States containing a majority of the total population of all the States.

III

That a political device accords with accepted political theories and seems logical and consistent will not definitively commend it to any politically minded people, least of all to a people of English traditions, until they are reasonably sure how it will work.

The first and most obvious criticism of the plan here proposed is that under it an amendment might be defeated by the united action or inaction of the ten most populous States, which at present contain a majority of the population of the forty-eight States, while under the existing three-fourths rule thirteen non-acceptances are requisite. Accordingly, instead of facilitating amendment, the proposal seems to make it more difficult. Here again we have a theoretical possibility that is practically not a possibility. The ten largest States are New York, Pennsylvania, Illinois, Ohio, Texas, Massachusetts, Missouri, Michigan, Indiana, and Georgia. It is not conceivable that these ten States should be aligned either for or against any measure, with thirty-eight States massed on the opposite side. It is not imaginable that Massachusetts and Pennsylvania should be found acting in harmony with Georgia and Texas, unless nearly all the States in the Union were of the same mind. Nor is this a recent situation. In no Presidential election since the admission of Texas to the Union have these ten States voted for the same candidate. Behind the political antitheses lie differences of social and economic conditions. In three of these States the race problem is serious; the others are little affected by it. Texas and Georgia are agricultural States; Massachusetts, New York, and Pennsylvania are States in which manufacturing interests outweigh agricultural interests; in the other five States the interests of agriculture, on the one hand, and of manufactures and commerce, on the other, are more evenly balanced.

It may be added that a consideration of the rate at which population is increasing in the Far West, as compared with the Northeast, makes two predictions fairly safe: first, that in 1920 no ten States will be found to include a majority of the total State population; and second, that California will be certainly one of the ten, and possibly one of the seven, most populous States—a change which will widen the geographical distribution of this arithmetical group.

Under the plan here proposed, as under that proposed

by Professor Burgess, any political party strong enough to elect a President might endeavor, with reasonable hope of success, to amend the Constitution; for throughout our political history the candidates who have secured a majority of the votes in the Electoral College have regularly carried a majority of the States containing a majority of the population of all the States. In two cases the States were equally divided; in 1848 Taylor and Cass each carried fifteen States, and in 1880 Garfield and Hancock each carried nineteen; but no candidate has ever received a majority of the total electoral vote from a minority of States. And in one case only did the majority of States whose electoral votes were counted for the successful candidate fail to contain a majority of the population: in 1876 the seventeen States which the returning boards and the electoral commission left in the Tilden column contained nearly a million and a half more inhabitants than the twenty-one States allotted to Hayes. Except in these three instances, the rule above stated seems to have held good, even in elections that were fairly close. Lincoln's first election is commonly cited as the classical example of a minority victory; but in 1860 Lincoln carried eighteen States, and these States contained more than sixty per cent. of the total population of the thirty-three States, and, of course, a much larger majority of the free population. From 1884 to 1896 inclusive the division of the States in Presidential elections was very close, and Republican and Democratic victories alternated; but in each instance the successful candidate carried one or two more States than his opponent, and in each instance the States ranged on the winning side included a majority of the population of all the States.

The national majorities or pluralities which political statisticians delight to compute usually follow the same lines. Under our system, such computations have only a theoretic interest; and even from the point of view of political theory it is questionable whether a popular majority in a national election has any significance as an indication of the general will, because of the diverse conditions under which the suffrage is accorded in the different States. And if, on the principle of " counting heads instead of breaking them," majorities or pluralities of votes are fundamentally significant as indications of power—of fighting power, if that should be needed—it is clear that when a country is

divided into antagonistic sections, a party that carries, by narrow majorities or pluralities, a section containing a considerable majority of the total population is really stronger than a party that carries, by overwhelming majorities, a less populous section; for, if it comes to fighting, the former party, although a minority party in the original count of total votes, will command all the resources and exert the whole physical power of the more populous section which it controls, as the Republican party did in the Civil War. Dynamically, Lincoln was not a minority President.

In a country so large as ours has grown to be, both in area and in population, and in which the social conditions and economic interests are so diverse, sectional groupings are bound to appear. It is, perhaps, the greatest defect of the existing method of amendment that it enables a single section, if it contains one more than one-fourth of the States, to arrest the development of a national policy. How will the plan of constitutional amendment here proposed work as regards the balance of power between the chief sections of the United States? And how will it work as regards the balance of power between the diverse economic interests which chiefly create significant sectional groupings?

The first of these questions may be answered very briefly. No group of States that can be regarded as a political section includes a majority of the States or contains a majority of the population of the States. The northeastern group, which consists of New England, the middle Atlantic, and the east north central States, contained as recently as 1880 a majority (52 per cent.) of the population of all the States, which then numbered thirty-eight. Of the total population of the forty-eight States this northeastern group has now, however, but 48 per cent. Accordingly, under the plan proposed, no section could impose its distinctive policies on the other sections, nor could any section arrest the development of a national policy.

That divergent economic interests may produce alignments of States quite different from any that have heretofore appeared in our politics is in a measure indicated by the attitude which the States have thus far taken on the pending income-tax amendment. Since this amendment is presented under non-partisan auspices, it has not divided the States on party lines, although it has received stronger support in the Democratic States. If, however, we analyze the

vote by sections, the results are more interesting. In New England it has been ratified by one State only, Maine; in the middle Atlantic States by one only, New York; and in the entire Northeast (including Delaware) the vote is 7 for and 8 thus far against. The South is not yet solid on this proposal, but with Oklahoma it stands already 11 to 4 for ratification. In the sixteen Western States (New Mexico and Arizona not having yet qualified) the record stands 13 for the amendment and 3 thus far opposed. This different attitude of the different sections is closely connected with their respective economic interests. The distinctively agricultural States and those States in which agricultural interests are practically equal to manufacturing and commercial interests stand for the amendment 19 to 5; and if from this group we isolate those States in which more than 60 per cent. of the adult males are engaged in agricultural pursuits, we find that all these States, ten in number, have ratified the amendment. On the other hand, the States in which manufacturing and commercial interests preponderate have voted 12 in favor, 10 thus far against; and if from this group we isolate the States in which the manufacturing interests alone outweigh the agricultural interests, the record is only 4 in favor with 7 thus far against. And if we isolate the States in which manufactures and mechanical pursuits employ more than 60 per cent. of the adult males, we find that but 1 of these States, New York, has ratified the amendment, while 5 have not. The vote on this amendment thus shows a striking tendency toward a division of the States on economic lines, with the agricultural States on one side and the manufacturing and commercial States on the other.

How would the proposed plan of ratifying constitutional amendments affect the balance of power between these interests? Of the forty-eight States twenty-three may be classed, according to the Census statistics of occupations, as manufacturing and commercial States. The twelve States in which manufacturing interests are preponderant contain more than 30 per cent., and the eleven States in which the combined interests of manufactures and commerce outweigh those of agriculture contain nearly 21 per cent. of the population of all the States. The manufacturing and commercial States accordingly form a minority of the States, but they contain a majority of the total popula-

tion. On the other hand, the twenty-five remaining States, which may be classed as agricultural States, contain only 49 per cent. of the total State population. Under the proposed plan, accordingly, neither group could carry a constitutional amendment against the solid opposition of the other group. If the margin of two per cent. of the total State population seems a narrow one for the protection of the manufacturing and commercial interests, it must be remembered that, in the nature of things, this margin will increase, because the population of the manufacturing States is increasing more rapidly than that of the agricultural States. On the other hand, now that the whole continental territory of the United States, except Alaska, is occupied by organized States, the margin of State votes which protects the agricultural interests is practically unchangeable, except by a change in the industrial character of the agricultural States themselves. If, however, the United States should eventually become essentially a manufacturing and commercial country, it would be in accordance with sound political theory that the manufacturing and commercial interests should be able to shape the law by the open process of peaceful change; for otherwise they would assuredly either assert themselves by corruption or change the law by revolution or *coup d'état.*

Is it futile to hope and visionary to believe that such a reform as is here outlined can be accomplished? Considering the tenacity of conservative sentiment and the strength of the conservative interests that will probably be aligned against such a change, prophecy would be hazardous. Sooner or later, however, it will be generally realized that the first article in any sincerely intended progressive programme must be the amendment of the amending clause of the Federal Constitution; and if this change should be resisted only by those who believe that the Constitution framed for the Atlantic seaboard in 1787, and last amended in 1870, meets fully and at all points the needs of the nation to-day, and that it can be adapted, without formal change, to meet the needs of the generations of Americans yet to be born, such an amendment would be ratified, not by thirty-six States only, but by the unanimous voice of all the States.

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